Yokomasu Marketing Sdn Bhd & Anor v Chor Tse Min

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO P-02(NCVC)(W)-1821–10 OF 2015
IDRIS HARUN, MARY LIM AND ASMABI MOHAMAD JJCA
10 NOVEMBER 2017

Tort — Defamation — Publication — Notice by company — Notice stated director resigned and no longer represented company and was required to report to office — Whether words in notice defamatory of director — Whether director entitled to damages

The second appellant ('the second defendant') and the respondent ('the plaintiff') were the directors of the first appellant ('the first defendant'). The first defendant published a notice in *Sin Chew* newspaper ('the notice') that the plaintiff had resigned and had no right to represent the first defendant. The notice also required the plaintiff to report to the office to settle arising problems. According to the plaintiff: (a) the notice was calculated to expose the plaintiff to hatred, ridicule or contempt in the mind of a reasonable man; and (b) a cursory reading the notice would obviously mean that the plaintiff was an unethical and dishonest businessman. The plaintiff commenced an action for defamation against the first and second defendants, claiming for: (i) his outstanding monthly salary of RM2,000 including his directorship fees; (ii) general and aggravated damages; and (iii) a formal apology by the defendants to the plaintiff in *Sin Chew* newspaper and *The Star* newspaper. In resisting the plaintiff's claim, the defendants argued that: (A) the first and second defendants were two separate legal entities and the plaintiff's claim against the second defendant for his outstanding salary was unmaintainable; (B) the plaintiff could not bring a claim for his outstanding salary as prior to the current proceedings, the plaintiff had lodged a complaint to the Labour Department for unlawful termination and the first defendant was ordered to pay a sum of RM1,500; (C) the second defendant did not publish the notice as the notice only bore the name of the first defendant; and (D) the notice did not accuse the plaintiff of any wrongdoing as the words used in the usual and ordinary meaning were not defamatory to the plaintiff. The High Court decided in favour of the plaintiff. Hence the present appeal.

Held, allowing appeal:

(1) The reason for the notice was to locate and/or track the plaintiff who had gone missing since August 2012. The publication was the best avenue and/or last resort for the defendants to locate the plaintiff. Having examined the words in the notice, the court was satisfied that any

ordinary person reading the notice would not assume anything defamatory of the same. The notice did not accuse the plaintiff of any wrongdoing. Instead, the plaintiff was required to contact the first defendant to settle outstanding issues between them. The words in the notice definitely did not have the effect and/or meaning as ascribed by the plaintiff (see paras 29–30).

(2) The judicial commissioner ('the JC') gave extensive meanings to the words in the notice which meanings were unsubstantiated in law and facts. The JC failed to appreciate the facts and evidence when he ruled that a case for defamation had been made out against the defendants on standard required in law. The JC also erred in ordering the first defendant to pay the plaintiff the sum of RM2,000, being the plaintiff's salaries and director's fee when there was clear evidence that the plaintiff had failed to report for work. Furthermore, the plaintiff admitted that he was wrongfully terminated and a default order was made by the Labour Court ordering the first defendant to pay the plaintiff the sum of RM1,500 being the final payment for the plaintiff's wrongful termination (see paras 31–32).

[Bahasa Malaysia summary

Perayu kedua ('defendan kedua') dan responden ('plaintif') adalah pengarah perayu pertama ('defendan pertama'). Defendan pertama telah menerbitkan satu notis dalam surat khabar *Sin Chew* ('notis') bahawa plaintif telah meletak jawatan dan tiada hak mewakili defendan pertama. Notis tersebut juga mengkehendaki plaintif melapor diri di pejabat untuk menyelesaikan masalah-masalah yang timbul. Menurut plaintif: (a) notis ini adalah percaturan untuk mendedahkan plaintif kepada kebencian, cemuhan dan penghinaan pada minda orang yang munasabah; dan (b) bacaan sepintas lalu notis tersebut jelas bermakna plaintif seorang ahli perniagaan yang tidak beretika dan tidak jujur. Plaintif memulakan tindakan fitnah terhadap defendan pertama dan kedua di Mahkamah Tinggi, menuntut: (i) tunggakan gaji bulanannya yang berjumlah RM2,000 termasuk yuran pengarah; (ii) ganti rugi am dan teruk; dan (iii) permohonan maaf rasmi dalam surat khabar *Sin Chew* dan *The Star*. Dalam membantah tuntutan plaintif, defendan menghujahkan: (A) defendan pertama dan kedua adalah dua entiti perundangan yang berasingan dan tuntutan plaintif terhadap defendan kedua bagi tunggakan gajinya tidak boleh dikekalkan; (B) plaintif tidak boleh membawa tindakan bagi tunggakan gaji kerana sebelum prosiding ini, plaintif telah membuat aduan di Jabatan Buruh bagi pemecatan salah dan defendan pertama telah diarahkan membayar sejumlah RM1,500; (C) defendan kedua tidak menerbitkan notis tersebut kerana notis tersebut hanya mempunyai nama defendan pertama; dan (D) notis tersebut tidak menuduh plaintif berbuat apa-apa kesalahan kerana perkataan-perkataan yang digunakan dalam maksud biasanya tidak memfitnah plaintif. Mahkamah Tinggi memutuskan

berpihak pada plaintif. Oleh itu rayuan ini. A

Diputuskan, membenarkan rayuan:

(1) Tujuan notis itu adalah untuk mencari dan/atau mengesan plaintif yang telah hilang sejak Ogos 2012. Penerbitannya adalah cara terbaik dan/atau langkah terakhir untuk defendan-defendan mencari plaintif. Setelah memeriksa perkataan-perkataan dalam notis tersebut. Mahkamah berpuas hati bahawa mana-mana orang biasa yang membaca notis tersebut tidak akan menganggap apa-apa memfitnah tentangnya. Notis tersebut tidak menuduh plaintif berbuat apa-apa kesalahan. Sebaliknya, plaintif dikehendaki menghubungi defendan pertama untuk menyelesaikan isu-isu berbangkit antara mereka. Perkataan-perkataan dalam notis langsung tidak mempunyai kesan/dan maksud yang plaintif katakan (lihat perenggan 29–30). B C

(2) Pesuruhjaya kehakiman ('PK') memberi tafsiran lanjut perkataan-perkataan dalam notis yang maknanya tidak disokong oleh undang-undang dan fakta. PK gagal mempertimbangkan fakta dan keterangan apabila beliau memutuskan satu kes fitnah telah terbukti terhadap defendan-defendan berdasarkan standard yang dikehendaki undang-undang. PK juga terkhilaf dalam memerintahkan defendan pertama membayar kepada plaintif sejumlah RM2,000 iaitu gaji dan yuran pengarah sedangkan terhadap keterangan jelas bahawa plaintif gagal melapor diri untuk kerja. Tambahan lagi, plaintif mengaku bahawa dia telah dipecat secara salah dan satu perintah ingar dibuat oleh Mahkamah Perusahaan memerintahkan defendan pertama membayar kepada plaintif sejumlah RM1,500 iaitu bayaran akhir bagi pemecatan salah plaintif (lihat perenggan 31–32).] D E F

Notes

For cases on publication, see 12(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 884–888. G

Cases referred to

Abdul Rahman Talib v Seenivasagam & Anor [1965] 1 MLJ 142b (refd)
AJA Peter v OG Nio & Ors [1980] 1 MLJ 226; [1979] 1 LNS 1 (refd) H
Ayob bin Saudi v TS Sambanthamurthi [1989] 1 MLJ 315; [1989] 1 CLJ Rep 321, HC (refd)
Chin Choon @ Chin Tee Fut v Chua Jui Meng [2005] 3 MLJ 494; [2005] 2 CLJ 569, CA (refd)
Chok Foo Choo @ Chok Kee Lian v The China Press Bhd [1999] 1 MLJ 371; [1999] 1 CLJ 461, CA (folld) I
English v Emery Reimbold & Strick Ltd and other appeals [2002] 3 All ER 385; [2002] EWCA Civ 605, CA (refd)
Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors [2005] 2 MLJ

A 1; [2004] 4 CLJ 309, FC (refd)
Hamit bin Matusin & Ors v Penguasa Tanah dan Survei & Anor and another appeal [2006] 3 MLJ 289; [2006] 2 CLJ 251, CA (refd)
Kian Lup Construction v HongKong Bank Malaysia Bhd [2002] 7 MLJ 283; [2002] 7 CLJ 32, HC (refd)
B *Lee Ing Chin @ Lee Teck Seng v Gan Yook Chin & Anor* [2003] 2 MLJ 97, CA (folld)
Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor [1973] 2 MLJ 56 (refd)
Tay Kheng Hong v Heap Moh Steamship Co Ltd [1964] 1 MLJ 87, PC (refd)
C *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393, HC (refd)

Legislation referred to

D Companies Act 1965
Defamation Act 1957

Appeal from: Suit No 23NCVC-6–08 of 2013 (High Court, Pulau Pinang)

E *Venodjit Singh (Anoop & See) for the appellant.*
J Shamesh (Charlotte Williams with him) (Jeevaretnam & Co) for the respondent.

Asmabi Mohamad JCA (delivering judgment of the court):

F INTRODUCTION

[1] The appellants ('the defendants in the High Court') had appealed against the decision of the High Court in Penang which allowed the respondent's ('the plaintiff in the High Court') claim with costs. Vide the decision dated 29 September 2015, the appellants were ordered to pay the respondent G damages for defamation in the sum of RM200,000. The first appellant was further ordered to pay the sum of RM76,000 being the outstanding salary and directorship's fee totaling RM2,000 per month from August 2012 to date of judgment. Costs and interests were also ordered against the defendants.

H **[2]** Having perused the records of appeal, the written submissions filed herein and having heard the arguments of both learned counsel for the respondent and the appellants we allowed the appeal with costs of RM30,000 here and below.

I **[3]** Our reasons for doing so now follow.

[4] For ease of reference the parties will be referred to as they were described in the High Court.

BRIEF BACKGROUND FACTS

[5] The first defendant is a company incorporated under the Companies Act 1965 which deals with wholesale and retail sales of automotive parts, batteries and accessories.

[6] The first defendant was established by both the plaintiff and the second defendant on 16 June 2010.

[7] The plaintiff is a director and the sales manager of the first defendant, who holds 40% shares of the first defendant. The second defendant is also a director of the first defendant who holds 60% of the shares. The plaintiff's monthly basic salary is RM1,500 plus RM500 as directorship fee.

[8] On 29 March 2011, one Ong Bee Wah was appointed as another director of the first defendant and in 2013, the second defendant sold one of his shares to Ong Bee Wah at RM1.

[9] On 15 January 2013, the first defendant had caused a notice to be published in the *Sin Chew* newspaper ('the impugned notice') in Mandarin, which was translated to Bahasa Malaysia as follows:

> Dengan ini memberi Notis bahawa Pemegang Saham Syarikat kami iaitu CHOR TSE MIN (K/P No. 730217-07-5357) telah pada bulan September 2012 meletak jawatan. Oleh yang demikian mulai dari tarikh tersebut beliau tidak mempunyai sebarang hak atau kuasa untuk mewakili Syarikat kami dalam apa jua urusniaga dan juga untuk mengutip/memungut apa-apa wang. Juga dalam tempoh masa 3 hari ini Penama dikehendaki melaporkan diri ke Pejabat ini untuk menyelesaikan segala masalah berhubung dengan Syarikat kami. Jikalau tidak segala akibatnya hendaklah ditanggung oleh Penama sendiri. Dengan ini disiarkan Notis ini untuk makluman.
>
> YOKOMASU MARKETING SDN BHD (904778)
>
> 113, 115 & 117, Jalan Kota Permai, Taman Kota Permai,
>
> 14000 Bukit Mertajam, Penang.
>
> 13/1/2013.

[10] According to the plaintiff, the impugned notice was calculated to expose the plaintiff to hatred, ridicule or contempt in the mind of a reasonable man. The plaintiff further contended that a cursory reading of the impugned notice would obviously mean that the plaintiff is an unethical and dishonest businessman.

[11] On 21 November 2013, the plaintiff brought a civil suit for defamation

against the first and second defendants seeking for, amongst others, the following reliefs:

(a) his outstanding monthly salary of RM2,000 including his directorship fees of RM500 from August 2012 until the date of judgment;

(b) general damages;

(c) aggravated damages; and

(d) a formal apology by the defendants to the plaintiff in *Sin Chew* newspaper and *The Star* newspaper within seven days of the date of judgment.

IN THE HIGH COURT

The plaintiff's case

[12] The plaintiff's case is summarised as follows:

(a) the impugned notice which was published in *Sin Chew* newspaper on 15 January 2013 is defamatory of the plaintiff. The words in the impugned notice as particularised at para 9 of the amended statement of claim were calculated to expose the plaintiff to hatred, ridicule or contempt in the mind of reasonable man;

(b) it was further contended that the words in the impugned notice were false and in its ordinary and natural meaning bore the imputation that the plaintiff is devoid of integrity;

(c) the defendants had failed to plead any recognisable defences provided under the Defamation Act 1957;

(d) the impugned notice was made to cause clients and employees of the first defendant as well as friends, family and the general public to have a perception that the plaintiff is a cheat, dishonest, unreliable, incompetent, undignified, and a problematic person;

(e) the words published in the impugned notice were untrue, confusing and defamatory to the plaintiff as the words in their usual and ordinary meaning implied that the plaintiff is unethical and devoid of integrity; and

(f) the second defendant had deliberately and unlawfully interfered in the business between the plaintiff and the first defendant.

The defendants' case

[13] In brief, the defendants' case is as follows:

(a) the first and second defendants are two separate legal entities and the plaintiff's claim against the second defendant for his outstanding salary is unmaintainable;

(b) prior to the current proceedings, the plaintiff had brought a complaint to the Labour Department for unlawful termination. As a result, the first defendant was ordered to pay a sum of RM1,500 as full and final settlement. Therefore, the plaintiff cannot bring another claim for his outstanding salary against the first defendant;

(c) the second defendant did not publish or cause to publish the impugned notice as the notice only bore the name of the first defendant; and

(d) the impugned notice did not accuse the plaintiff of any wrongdoing as the words used in their usual and ordinary meaning are not defamatory to the plaintiff.

FINDINGS OF THE LEARNED JC

[14] The learned JC made the following findings:

Defamation

(a) the burden of proof lies on the plaintiff to show:

(i) the words are defamatory;

(ii) the words refer to the plaintiff; and

(iii) the words were published.

(b) the impugned notice can be summarised as:

(i) the plaintiff resigned from the first defendant company in September 2012;

(ii) the plaintiff had no authority or rights to represent the first defendant or to make any collection of payment on behalf of the first defendant with effect from September 2012; and

(iii) the plaintiff had to report to the first defendant's office to settle all problems pertaining to the first defendant and if the plaintiff failed to do so, the plaintiff would bear all the consequences.

Defamatory words

(a) the learned JC was of the view that the impugned notice bore the imputation that the plaintiff was a person who had created problems in the first defendant and had resigned on September 2012. The court found the impugned notice would lower the plaintiff in the estimation of

A right-thinking members of society. Therefore, the words used were defamatory;

(b) as there was no dispute that the publication was referring to the plaintiff and that the impugned notice was published, the burden then shifted to the defendants to raise their defence in accordance with the law;

B

(c) the defendants pleaded that the publication of the impugned notice was not caused by the second defendant and in the alternative, the words used were not defamatory of the plaintiff.

C (d) the learned JC noted that based on the evidence of the second defendant, the plaintiff did not resign as director of the first defendant and at no time did the first defendant terminate or remove the plaintiff as the director. The plaintiff had also attended the Board of Directors' Meeting on 15 March 2013, which was after the publication of the notice. At the meeting, nothing was mentioned with regards to the plaintiff's resignation or removal;

D

(e) therefore, the learned JC came to the conclusion that the publication of the impugned notice on 15 January 2013 was made with malice and had caused injury to the plaintiff's reputation;

E

(f) with regard to second defendant's defence that the impugned notice was not caused by the second defendant, the learned JC was of the view that the impugned notice was caused by the second defendant. This is because, the second defendant is the largest shareholder of 60%, is the managing director and signed most of the cheques issued by the company. In fact, the second defendant had signed the cheque, being payment for the impugned notice in the *Sin Chew* newspaper; and

F

G (g) in addition, the second defendant had made a police report, reporting that the plaintiff was missing since October 2012 together with the company's Toyota Hilux, company's payments, receipt book and delivery orders. The learned JC found both defendants were liable for the said defamation.

H *Unlawful interference*

(a) the plaintiff also pleaded the tort of deliberate interference of the plaintiff's interest by unlawful means;

I (b) the learned JC found there was no clear evidence to show the unlawful interference by the second defendant in the business between the plaintiff and the first defendant. The fact is, the second defendant is the managing director holding 60% of the shares and as such, he will not deliberately do something that will affect the business of the first defendant; and

(c) the learned JC found the plaintiff had failed to prove unlawful interference.

The plaintiff's outstanding salary and directorship fee

(a) the plaintiff's basic salary is RM1,500 and his director's fee is RM500. The plaintiff had not been paid his salary and director's fee since August 2012;

(b) the order dated 28 March 2014, granted by the Labour Department was only an order for the first defendant to pay the plaintiff's basic salary and it does not relate to the plaintiff's termination or removal; and

(c) the learned JC found, the plaintiff had established his claim for his outstanding salary and director's fee. Since the first defendant and the second defendant are two separate legal entities, the liability to pay for the outstanding salary and director's fee to be borne by the first defendant only.

Damages

(a) the learned JC found the defendants had defamed the plaintiff. Hence the plaintiff would be entitled to damages. After considering all relevant factors, the learned judge awarded the sum of RM200,000 to the plaintiff as damages.

(b) the learned JC ordered as follows:

(i) the defendants to pay damages of RM200,000 to the plaintiff for the defamation;

(ii) the first defendant to pay the outstanding salary and director's fee in a sum of RM2,000 per month from August 2012 until the date of judgment, all amounting to RM76,000;

(iii) payment of interest at 4%pa on the total judgment sum from the date of filing of the suit until date of judgment and 5%pa from the date of judgment until full realisation; and

(iv) costs of RM20,000 to the plaintiff.

OUR DECISION

The law

[15] We were mindful of the limited role of the appellate court in relation to findings of facts made by the court of first instance.

[16] In the course of that, we had sought guidance from the very often quoted case of *Lee Ing Chin @ Lee Teck Seng v Gan Yook Chin & Anor* [2003]

2 MLJ 97 where the Court of Appeal held as follows:

> an appellate court will not, generally speaking, intervene unless the trial court is shown to be plainly wrong in arriving at its decision. But appellate interference will take place in cases where there has been no or insufficient judicial appreciation of the

[17] Reference is also made to the decision of the Federal Court in *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1; [2004] 4 CLJ 309 where the Federal Court held that the test of 'insufficient judicial appreciation of evidence' adopted by the Court of Appeal was in relation to the process of determining whether or not the trial court had arrived at its decision or findings correctly on the basis of the relevant law and the established evidence.

[18] In the above case, the Federal Court had also stated, the court hearing the appeal is entitled to reverse the decision of the trial judge after making its own comparisons and criticisms of the witnesses and of its own view of the probabilities of the case. It is also entitled to examine the process of evaluation of the evidence by the trial court and reverse the decision if it is wrong.

[19] At the end of the case, the trial judge has a duty to explain how the said court had come to its findings and/or how it appraised the evidence and issues which will determine the outcome of the case before it. In doing so the judge need not explain or identify every factor that he had considered. If the learned judge failed to do so, his decision can be set aside (see *English v Emery Reimbold & Strick Ltd and other appeals* [2002] 3 All ER 385; [2002] EWCA Civ 605).

[20] The appellate court must be slow to interfere with the findings made by the trial court unless if it be shown there was no judicial appreciation of the evidence adduced before it (see *Hamit bin Matusin & Ors v Penguasa Tanah dan Survei & Anor and another appeal* [2006] 3 MLJ 289; [2006] 2 CLJ 251; *Tay Kheng Hong v Heap Moh Steamship Co Ltd* [1964] 1 MLJ 87).

THE APPEAL BEFORE US

[21] The plaintiff's case against the defendants was premised on the tort of defamation. The plaintiff pleaded that the defendants had caused the impugned notice to be published on 15 January 2013 in *Sin Chew* newspaper (see para 8 of the plaintiff's amended statement of claim dated 21 November 2013 ('ASOC')).

[22] According to the plaintiff the words in the impugned notice, in their natural and ordinary meaning meant and were understood to mean, the meanings as ascribed by the plaintiff in paras 12 and 13 of his ASOC (see

pp 46–48 of the core bundle). These words according to the plaintiff, imputed that the plaintiff is a cheat, dishonest, unreliable, incompetent, undignified, and a problematic person. The words as particularised at para 8 of the ASOC were calculated to expose the plaintiff to hatred, ridicule or contempt in the mind of reasonable man.

[23] It was further contended that the words in the impugned notice were false and in its ordinary and natural meaning bore the imputation that the plaintiff is devoid of integrity. The impugned notice was issued with malice intent, published and circulated.

[24] In a defamation case, such as this, the learned JC has a duty to rule on the three essential ingredients of the tort of defamation before he proceeds to decide on the defences pleaded by the defendants, if any. Firstly, the learned JC ought to determine if the impugned notice was capable of bearing the defamatory meaning as ascribed in para 13 of the ASOC. Secondly the learned JC ought to examine if the impugned notice referred to the plaintiff. Lastly the learned JC ought to decide if the impugned notice was published to a third person (see *Ayob bin Saudi v TS Sambanthamurthi* [1989] 1 MLJ 315; [1989] 1 CLJ Rep 321).

(Also see *Abdul Rahman Talib v Seenivasagam & Anor* [1965] 1 MLJ 142b; *Kian Lup Construction v HongKong Bank Malaysia Bhd* [2002] 7 MLJ 283; [2002] 7 CLJ 32; *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1973] 2 MLJ 56 and *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393).

[25] The test to be applied has been laid down in the case of *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371; [1999] 1 CLJ 461 ('Chok Foo Choo'), where the court held that in order to ascertain if the words complained of are defamatory of the plaintiff, one has to examine if the words complained of in their natural and ordinary meaning 'impute to the plaintiff any dishonourable or discredible conduct or motives or a lack of integrity on his part?'. If the answer is in the affirmative, the words complained of is defamatory of the plaintiff. The court in *Chok Foo Choo* stated as follows:

> In my judgment, the test which is to be applied lies in the question: do the words published in their natural meaning impute to the plaintiff any dishonourable or discredible conduct or motives or a lack of integrity on his part? If the question invites affirmative response, then the words complained of are defamatory.

[26] Guided by the above authority, our next task is to examine, if the impugned notice in its ordinary and natural meaning, imputes to the plaintiff that he is a cheat, dishonest, unreliable, incompetent, undignified, and a problematic person as ascribed in paras 12–13 of the ASOC and/or whether

A the impugned notice was likely to expose the plaintiff to hatred, ridicule or contempt in the mind of reasonable man as claimed. In short, whether the words in the impugned notice in its ordinary and natural meaning bore the meaning that the plaintiff is devoid of integrity.

B **[27]** Upon perusal of the impugned notice, we found that the said notice was published by the first defendant to notify its clients specifically and the public at large the following:

(a) the plaintiff had resigned from the first defendant in September 2012;

C (b) from September 2012, the plaintiff had no right or authority to represent the first defendant and/or to have any dealings whatsoever with the first defendant's clients and/or to collect any payments due to the first defendant from its clients; and

D (c) the plaintiff was required to report for duty at the first defendant's office within three days from the date of the impugned notice to resolve all issues with the first defendant, otherwise the plaintiff would be personally liable.

E **[28]** We were of the view that the impugned notice would have to be examined in the light of the events, facts and/or circumstances leading to the publication of the same. The evidence before the learned JC showed the following, which prompted the first defendant to cause the said impugned notice to be published on 15 January 2013:

F (a) the plaintiff had not been coming to work at the first defendant since August 2012;

(b) the plaintiff collected monies from the first defendant's clients but had failed to deposit the same to the first defendant's account and/or to hand over the collections to the first defendant and/or to account for the same;

G (c) the plaintiff failed to report at the first defendant premises to carry out carry out his duties and responsibilities as a sales manager and/or director;

H (d) various attempts were made by the defendants, either vide letters or phone calls to locate the plaintiff, however the plaintiff could not be located and/or contacted. Even if he could be contacted he appeared to be evasive. In fact the plaintiff had abandoned his position as a sales manager in the first defendant;

I (e) despite a notice of demand having been issued by the first defendant to request the plaintiff to pay the sum of RM2,412.25 belonging to the first defendant which the plaintiff had collected from the first defendant's clients, the plaintiff failed to respond to the same;

(f) the plaintiff had taken along with him assets belonging to the first defendant, a Toyota Hilux Car bearing registration No PKF 2623, a HTC Wildfire handphone and a GPS device. As a result of the plaintiff's action in taking the vehicle from the first defendant, Public Bank had repossessed the vehicle and sued the first defendant for the balance of the monies still due and owing under the hire purchase agreement;

(g) due to the plaintiff's failure to report for work, the first defendant had problems filing its 2012 financial statements with the CCM on or by 31 August 2012;

(h) the plaintiff turned up for the board of directors' meeting on 15 March 2013 only after the impugned notice had been published on 15 January 2013; and

(i) a police report was lodged on 21 December 2012.

[29] Having examined the words of the impugned notice, we were satisfied that to our mind any ordinary person reading the impugned notice would not assume anything defamatory of the same. The impugned notice did not accuse the plaintiff of any wrongdoing. Instead he was required to contact the first defendant to settle outstanding issues between them. The words of the impugned notice definitely did not have the effect and/or the meaning as ascribed by the plaintiff in paras 12–13 of the ASOC.

[30] From the events we outlined in para 27 above, the reason for the impugned notice to be published was to locate and/or track down the plaintiff who had, since August 2012 gone missing, to enable the defendants resolve outstanding issues between the plaintiff and the defendants. The publication of the impugned notice was the best avenue and/or the last resort for the defendants to locate the plaintiff.

[31] We observed, despite the events as outlined by us in para 27 above, the learned JC chose to ignore these glaring facts and proceeded to give extensive meanings to the words in the impugned notice which meanings are unsubstantiated in law and on the facts. We were therefore satisfied that the learned JC had failed to fully appreciate the facts and evidence before him when he ruled that a case for defamation had been made out against the defendants on the standard required in law.

[32] With respect to the award of RM76,000, we were of the view that the learned JC had erred in ordering the first defendant to pay the plaintiff the sum of RM2,000, being the plaintiff's salaries and director's fee when there was clear evidence before His Lordship that the plaintiff had failed to report for work since August 2012. The plaintiff had by his own admission testified that he was wrongfully terminated and a default order was made by the Labour Court

dated 28 March 2012, wherein the first defendant was ordered to pay the plaintiff the sum of RM1,500 being the full and final payment for the plaintiff's claim for wrongful termination. Alternatively, we were of the view, at most, the plaintiff is only entitled to his director's fee.

[33] Based on the aforesaid, we fully agree with the contention of the defendants that there is duplicity of claim here. Hence the same ought to be rejected by the court.

DAMAGES

[34] In the event, for some reasons, we were wrong in resolving the case at hand in the manner we did, and assuming a case had been made out against the defendants for defamation, we found that the award of RM200,000 as general and aggravated damages excessive. In awarding damages for a claim founded on defamation we were guided by the established authorities enunciated by the higher courts. One such case which is often quoted by the courts across the country is the case of *Chin Choon @ Chin Tee Fut v Chua Jui Meng* [2005] 3 MLJ 494; [2005] 2 CLJ 569 where His Lordship Justice Sri Ram JCA had made reference to the book entitled *Defamation Law, Procedure & Practice* by Price & Doudu (3rd Ed) at p 208 which had laid down the principles to guide the court in assessing compensatory damages for defamation cases as follows:

(a) the gravity of the allegation;

(b) the size and influence of circulation;

(c) the effect of publication;

(d) the extent and nature of claimant's reputation;

(e) the behavior of the defendant; and

(f) the behavior of the claimant.

[35] Perhaps it would be appropriate at this juncture for this court to examine the pattern and/or trend of damages awarded by the courts, in order to ascertain what would be a fair and suitable damages to be awarded to the plaintiff. In *Chin Choon @ Chin Tee Fut v Chua Jui Meng* [2005] 3 MLJ 494; [2005] 2 CLJ 569 for instance where the defamation case involved a Cabinet Minister, the Court of Appeal saw it fit to reduce the award of damages of RM1.5m to only RM200,000. The court ruled that the award of RM1.5m awarded by the High Court was excessive. In *AJA Peter v OG Nio & Ors* [1980] 1 MLJ 226; [1979] 1 LNS 1 which case concerned a claim by an insurance supervisor of an insurance company against another agency supervisor, the award of damages of RM15,000 was reduced to RM9,000.

[36] The amount of damages to be awarded by the court in each case depends on the facts and the circumstances of the case. Looking at the facts of this case and the status of the plaintiff, we were of the view that the sum of RM200,000 is rather excessive. Even assuming we were wrong in our appreciation of the facts and the law, and that the defendants are liable for the tort of defamation, we were of the view that a global figure RM50,000 for general and aggravated damages would be adequate to vindicate the plaintiff to the public and console him for the wrong done to him by the defendants.

CONCLUSION

[37] Having examined the pleadings, the notes of proceedings, and having heard the respective learned counsel, we found that the learned JC had not given sufficient judicial appreciation of the evidence both testimonial and documentaries as well as the established principles of law concerning the tort of defamation. We were constrained to hold that the learned JC had failed to judicially appreciate the evidence and/or the law presented before him so as to render his decision plainly wrong and upon curial scrutiny it merits our appellate intervention. Hence, we unanimously allowed this appeal and set aside the order of the learned JC dated 29 September 2015 with costs of RM30,000 herein and below subject to payment of allocator fees. The deposit is refunded to the plaintiff.

Appeal allowed.

Reported by Afiq Mohamad Noor